



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 14, 1996

Mr. Sigifredo Gonzales, Jr.
Sheriff of Zapata County
Box 2311
Zapata, Texas 78076

OR96-0190

Dear Sheriff Gonzales:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 38206.

The Sheriff's Department received a request for copies of the individual results of a mandatory urine drug test administered to all its employees. You contend the requested information may be open to public inspection but are unsure as to the applicability of any exception under Chapter 552 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information must be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld on the basis of common-law privacy, if:

- (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person,
- and (2) the information is not of legitimate concern to the public.

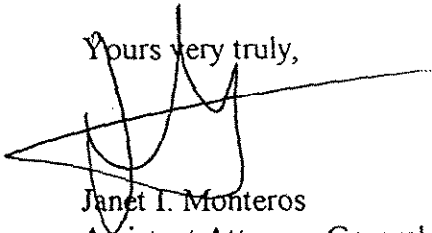
540 S.W.2d at 685. In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683; *see also*, Open Records Decision Nos. 470 (1987) (concluding that fact that a person broke out in hives as a result of severe emotional distress is excepted by common-law privacy), 455 (1987) (concluding that kinds of prescription drugs a person is taking are protected by common-law privacy), 343 (1982) (concluding that information regarding drug overdoses, acute alcohol intoxication,

obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress is protected by common-law privacy). In addition, court cases which involve mandatory urine testing recognize a privacy interest in records revealing whether or not a person tested had ingested illicit drugs. Open Records Decision No. 455 (1987).¹

In the instant case, the requester seeks the individual results of drug testing performed on any and all staff members, including sworn peace officers, of the Zapata County Sheriff's Department. The information you submitted reveals a form with a patient's name, sex, age, date of birth, and a battery of tests which detect a variety of drugs ranging from amphetamines to marijuana. Additionally, the requested information identifies individuals as having tested positive or negative as to alcohol and drugs in the urine. The information you have submitted, as distinguished from the information reviewed under Open Records Decision No. 594 (1991), which you cite, does not leave to conjecture which of the employees tested positive for drug use. We believe that the direct identification of an individual as having tested positive for use of alcohol and illegal drugs raises common-law invasion of privacy issues. See Open Records Decision No. 594 (1991) at 4. Accordingly, we conclude that you must withhold the copies of the individual results of drug tests under section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/ch

Ref.: ID # 38206

Enclosures: Submitted documents

cc: Ms. Kate Nuber McVey
Editor, Zapata County News
P.O. Box 216
Zapata, Texas 78076
(w/o enclosures)

¹*Shoemaker v. Handel*, 619 F.Supp. 1089 (D.N.J. 1985), *aff'd*, 795 F.2d 1136 (3rd Cir. 1986).